



The Consumer Voice in Europe

*Consumer protection elements
of the CESL*

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Questions from a consumer policy perspective

- Do European consumers need an optional European Sales law?
- What will be the impact of the proposed CESL on European consumers?
- What will be the impact of the proposed CESL on the future of European consumer policy and legislation?

Background

- The EU consumer law *acquis* has been built up since 1980 in the form of directives; this process and its results have been a **success story** for the EU and its citizens/consumers;
- The last milestone: the 2011 Consumer Rights Directive, a major revision which – *inter alia* - will harmonise all important elements of **online consumer contracts** as of December 2013;
- The European Commission now proposes to **substantially change** this traditional approach by switching to OPTIONAL regulation; a regulatory experiment with high risks and detrimental impact on consumers;

Impact assessment

A **health check of the IA** is urgently needed:

- Research into trade obstacles shows the lack of harmonisation of some parts of contract law is **not a significant concern, neither to consumers nor business.**
- Consumers care about **redress**, not so much about substantive rules in all relevant fields and from the protection of the Rome I Regulation
- Key assumptions of the IA are questionable and key aspects have not been taken into account, for example:
 - The IA ignores the harmonisation push of the Consumer Rights Directive on business' transactions costs
 - The real expenses of business for legal advice on foreign consumer legislation
 - The real impact of Rome I on b2c cross-border trade

BEUC does not support the CESL

Because:

- No need. Most stakeholders concerned agree, supported by evidence.
- No real “choice” for consumers.
- Confusion and complexity for consumers and SMEs.
- Consumers worse off under CESL compared to national law in certain fields.
- CESL blocks necessary improvements and modernisation of consumer law.

Optional regulation is not smart

Optional regulation is an inappropriate tool for b2c transactions

- Parallel regulation(s)/tandem regimes: more legal uncertainty and complexity for all players: 27 national + 1 EU + 1 optional EU law
 - Case law
 - Legislative changes and parallel developments
 - Role of CJEU?
- Discrimination and confusion: mandatory national legislation becomes optional and consumers are not treated in the same way depending on what regulation the trader chooses.
- Fragmentation and distortion of competition: big business can deal with it, not small.
- Optional not to be a buzzword.

Level of consumer protection in the CESL

- BEUC's preliminary analysis shows that **the level of protection** in the CESL is **LOW in certain important aspects**, it would deprive consumers in many countries of their current rights:
 - Protection against **unfair contract terms** is very low compared to many Member States.
 - **Legal guarantees**: less rights compared to national rules on use of remedies; only 6 months for reversal of burden of proof; new obligation for consumers to pay for use;
 - **Information requirements** not flexible;
 - No protection for low value **doorstep selling** contracts;
 - **Duty of notice** of avoidance in case of mistake: in many countries consumers;
 - **Prescription** period: longer periods in many MS.
- The reference for measuring the level of protection must not be the existing EU Directives, but the national laws, which determine the currently available protection for consumers;

No information, no choice

- CESL is “optional” for only one side of the contract: the business;
- The consumer can only decide either to buy under CESL or not to buy;
- A “conscious” and an “informed” choice? the consumer signs a statement and receives an information notice;
- But in reality, no consumer can understand what the consequences of CESL are in their case.



CESL impedes necessary developments in consumer law

Example: **Digital Content**

- Many studies show that consumer detriment is a fact because of uncertainty – modernisation of rules is necessary;
- Blatant need for clear and strong rights for all consumers;

BUT

- The Commission has announced that it will not take any legislative initiative in this field beyond the provisions in CESL;

As a consequence:

- Consumer protection on digital content will depend on the trader's choice.

What instead?

- European Model Contract for the EU-wide online sale of goods to consumers.
- Soft law approach - practical and quick solution link with ADR/ODR.
- Endorsed by consumer and business organisations.
- Does not replace national law but increases legal certainty and consumer confidence for cross-border sales transactions.
- BEUC's proposal – informal dialogue with business - work in progress.

Need for an EU strategy for consumer contracts

- Address the key barriers to cross-border trade, i.e. those listed in the recent IMCO report on e-Commerce;
- **Be smart:** Overcome perceptions and fears in relation to cross-border transactions by access to ADR/ODR and practical tools like codes and model contracts;
- Consumer rights need to be improved and modernised. The EU institutions **should seek to improve consumer contract law for ALL consumers;**
- **Next steps:**
 - ✓ **EU model contracts**/maybe linked to trustmark
 - ✓ Trust in **true** targeted **harmonisation** – it works
 - ✓ Limited review of 1999 **Guarantee** Directive
 - ✓ A new Directive on **digital** content products

Thank you for your attention.

Our most recent papers on European contract law are available online at:

www.beuc.eu

Consumer Contracts team

- BEUC/X/118/2011 Analysis of the Commission's impact assessment
 - BEUC/X/14/2012 Position on the CESL
 - BEUC/X/23/2012 Proposal for an EU model contract
- BEUC/X/55/2012 Unfair Contract Terms in Business-to-Consumer contracts in the proposed Common European Sales Law



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